

Appln. Serial No. 10/757,757  
Amendment Dated May 18, 2007  
Reply to Restriction Requirement Mailed April 19, 2007

### REMARKS

In the Restriction Requirement dated April 19, 2007, two species were identified: Species 1 (claims 12-18 and 25-33); and Species 3 (claims 21, 22, and 24).

In Applicant's Reply to the Restriction Requirement dated January 17, 2007, election of a species was made with traverse. The present Office Action failed to respond to Applicant's traversal of the Restriction Requirement dated January 17, 2007. Applicant respectfully requests that the Examiner address Applicant's traversal raised in the previous Reply to the Restriction Requirement dated January 17, 2007, and the traversal made herein.

In response to the present Restriction Requirement, Applicant elects, *with traverse*, Species 1 (claims 12-18 and 25-33).

Effectively, in the two Restriction Requirements, four species have been identified: Species A (claims 1-11); Species B (claims 12-18 and 25-33); Species C (claims 19 and 20); and Species D (claims 21, 22, and 24).

It is respectfully submitted that the identification of different sets of claims as being different species is improper. As stated by the M.P.E.P.:

*Claims are definitions of inventions. Claims are never species. ... Species are always the specifically different embodiments.*

M.P.E.P. § 806.04(e) (8<sup>th</sup> ed., Rev. 5), at 800-43 (emphasis in original).

For a proper restriction based on species, the Office Action must identify specific embodiments in the present application. The Office Action has failed to identify embodiments; rather, the Office Action has merely identified different sets of claims as species. Therefore, withdrawal of both the present Restriction Requirement (dated April 19, 2007) and the previous Restriction Requirement (dated January 17, 2007) is respectfully requested.

Although claims 1-11 and 19-20 have been cancelled, Applicant reserves the right to rejoin these claims into the application if the Examiner should withdraw the Restriction Requirement dated January 17, 2007 based on the improper identification of claims as being species.

In view of the foregoing, reconsideration of both Restriction Requirements (dated January 17, 2007 and April 19, 2007) is respectfully requested.

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All claims are in condition for allowance, which action is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 08-2025 (200315416-1).

Respectfully submitted,

Date:

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